

## Department of Energy

970.0404-1

of an organization (other than the contractor who is the individual's regular employer) in which the individual has an employment relationship or significant financial interest.

(b) The contractor shall be responsible for informing employees that they are expected to disclose any incompatibilities between duties performed for the contractor and their private interests and to refer undecided questions to the contractor.

### **970.0371-7 Outside employment of contractor employees.**

Employees of a management and operating contractor are entitled to the same rights and privileges with respect to outside employment as other citizens. Therefore, there is no general prohibition against contractor employees having outside employment. However, no employee of a contractor performing work on a full or part-time basis under a DOE management and operating contract may engage in employment outside official hours of duty or while on leave if such employment will:

- (a) In any manner interfere with the proper and effective performance of the duties of the position;
- (b) Appear to create a conflict-of-interest situation, or
- (c) Appear to subject DOE or the contractor to public criticism or embarrassment.

### **970.0371-8 Employee disclosure concerning other employment services.**

(a) Management and operating contractors are responsible for requiring its employees to file with the contractor, a written disclosure statement concerning outside employment services which involve the use of information in the area of the employee's employment with the contractor. The disclosure shall contain such information concerning the outside employment as the contractor may prescribe. As a minimum, the employee's disclosure shall:

- (1) Acknowledge that the employee has read and is familiar with:
  - (i) The requirements and restrictions prescribed in this section,

- (ii) DOE publication entitled, "Reporting Results of Scientific and Technical Work Funded by DOE", and

- (iii) The requirements of the contractor's contract with DOE relating to patents.

- (2) Include information concerning any rate of remuneration significantly in excess of the employee's regular rate of remuneration;

- (3) Identify any actual or potential conflicts with DOE's policies regarding conduct of employees of DOE's contractors set forth in this section;

- (4) Address any potential impacts that such employment may have on the contractor's responsibility to report fully and promptly to DOE all significant research and development information; and

- (5) Identify any potential conflicts such employment may have with the patent provisions of the contractor's contract with DOE.

- (b) The contractor shall provide a copy of all disclosures to the contracting officer.

### **970.0371-9 Contract clause.**

The contracting officer shall insert the clause at 970.5203-3, Contractor's Organization, in all management and operating contracts. The approval authority of the Secretary of Energy required in paragraph (c) may not be delegated. In paragraph (a) the words "and managerial personnel (see 48 CFR 970.5245-1(j))" may be inserted after "(see 48 CFR 952.215-70)".

## **Subpart 970.04—Administrative Matters**

### **970.0404 Safeguarding classified information.**

#### **970.0404-1 Definitions.**

*Access Authorization* means an administrative determination that an individual is eligible for access to classified information or is eligible for access to, or control over, special nuclear material.

*Classified Information* means any information or material that is owned by or produced for, or is under the control of the United States Government, and determined pursuant to provisions of Executive Order 12356 of April 2, 1982 (3

CFR, 1982 Comp., p. 166), or prior orders, or as authorized under the Atomic Energy Act of 1954, as amended, to require protection against unauthorized disclosure, and is so designated.

*Counterintelligence* means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document or communication security programs.

*Facility Clearance* means an administrative determination that a facility is eligible to access, produce, use or store classified information or special nuclear material.

*Restricted Data* means all data concerning design, manufacture, or utilization of atomic weapons; the production of special nuclear material; or the use of special nuclear material in the production of energy; but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954, as amended, (42 U.S.C. 2162).

[65 FR 81009, Dec. 22, 2000, as amended at 67 FR 14878, Mar. 28, 2002]

#### **970.0404-2 General.**

(a) Guidance regarding the National Industrial Security Program as implemented by the Department of Energy may be found at 904.4, Safeguarding Classified Information Within Industry. Additional information concerning contractor ownership when national security or atomic energy information is involved may be found at 904.70. Information regarding contractor ownership involving national security program contracts may be found at 904.71.

(b) Executive Order 12333, United States Intelligence Activities, provides for the organization and control of United States foreign intelligence and counterintelligence activities. DOE has established a counterintelligence program subject to this Executive Order which is described in DOE Order 5670.3 (as amended). All DOE elements, including management and operating contractors and other contractors managing DOE-owned facilities which

require access authorizations, should undertake the necessary precautions to ensure that DOE and covered Contractor personnel, programs and resources are properly protected from foreign intelligence threats and activities.

(c) For DOE management and operating contracts and other contracts designated by the Procurement Executive, or designee, the clause entitled, "Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts," implements the requirements of section 234B of the Atomic Energy Act (see 48 CFR 904.402(c)(1)) for the use of a contract clause that provides for an appropriate reduction in the fee or amount paid to the contractor under the contract in the event of a violation by the contractor or any contractor employee of any rule, regulation, or order relating to the safeguarding or security of Restricted Data or other classified information. The clause, in part, provides for reductions in the amount of fee, profit, or share of cost savings that is otherwise earned by the contractor for performance failures relating to the safeguarding of Restricted Data and other classified information.

[67 FR 14878, Mar. 28, 2002, as amended at 68 FR 68781, Dec. 10, 2003]

#### **970.0404-3 Responsibilities of contracting officers.**

(a) Management and operating contracts which may require the processing or storage of Restricted Data or Special Nuclear Material require application of the applicable DOE Directives in the safeguards and security series.

(b) The contracting officer shall refer to 48 CFR 904.71 for guidance concerning the prohibition on award of a DOE contract under a national security program to a company owned by an entity controlled by a foreign government when access to proscribed information is required to perform the contract.

[65 FR 81009, Dec. 22, 2000, as amended at 67 FR 14878, Mar. 28, 2002]